IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 459 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAYABHAI DEVRAJBHAI CHHAYANI

Versus

VOHRA TAHERALI ALIBHAI

Appearance:

1. Civil Revision Application No. 459 of 2000

MR SANDEEP N BHATT for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1

MR MEHUL S SHAH for Respondent No. 1

RULE SERVED for Respondent No. 2-5

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/08/2004

ORAL JUDGEMENT

#. By filing this petition, the petitioner, who is original defendant of Regular Civil Suit No.2 of 1992, has challenged the order passed by the trial Court dated 30.10.1999 by which the trial Court has permitted the plaintiff to withdraw the suit unconditionally by allowing his application at Exh.43.

#. The suit in question is filed by the original plaintiff, i.e. respondent No.1 herein. In the said suit, the plaintiff submitted the application for allowing him to withdraw the suit unconditionally. The trial Court by order below Exh.43 passed the order by which the plaintiff was permitted to withdraw the said suit and accordingly, the suit is disposed of as withdrawn. It is the aforesaid order, which is challenged in the present petition at the instance of the petitioner.

#. It is argued by Mr.Sandip Bhatt, learned counsel for the petitioner that at the time when the suit was pending, the petitioner - original defendant submitted the application for breach of the injunction as well as for giving police protection. It is submitted that till the question about breach of injunction is decided, the trial Court should not have permitted such withdrawal.

#. However, the trial Court has given cogent reasons by which the plaintiff was permitted to withdraw the suit unconditionally. The detailed reasons are given in the order below Exh.43 in the said suit. The order in question by which the plaintiff is permitted to withdraw the suit is not required to be interfered with by this Court in the present revision application. It is, however, clarified that if any application for breach of the injunction is pending before the trial Court, that can be decided on its own merits and it will have no bearing so far as the withdrawal of the suit is concerned.

#. At this stage, Mr.Bhatt submitted that the application for breach of injunction was given on 10.12.1993. However, as stated earlier, even if the suit is permitted to be withdrawn, the application, if any, given by the petitioner will be decided independently and without being influenced by the fact that the suit is withdrawn unconditionally.

#. With the aforesaid observations, this application is disposed of. Rule is discharged with no order as to costs.

(P.B.Majmudar,J)

(pathan)